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REMARKS/ARGUMENTS

Claims 4, 19, 45 and 50-55 are pending. Claims 1-3, 5-18, 20-44 and 46-49 have been canceled without prejudice or disclaimer of the subject matter they contain. New claims 50-55 are added. Support for new claims 50-55 can be found at, *inter alia*, page 2, line 25. It is believed that no new matter has been introduced. Applicant does not acquiesce to the propriety of any of the Examiner's rejections and does not disclaim any subject matter to which Applicant is entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997). Further, Applicant reserves the right to file continuing applications to cover disclosed subject matter not encompassed by the currently pending claims.

INFORMATION DISCLOSURE STATEMENT

The Office Action alleges that the Information Disclosure Statement filed on June 19, 2003, fails to comply with 37 C.F.R. § 1.98(a)(2). In response, Applicants respectfully submit that legible copies of all previously cited references have been submitted to the Patent Office in compliance with the rules. Nevertheless, Applicants have concurrently filed herewith (via hand carry) a transmittal letter providing copies of the cited references that were apparently misplaced and no longer in the file wrapper of the above-captioned patent application. Reconsideration and withdrawal of this objection are respectfully requested.

REJECTION UNDER 35 U.S.C. § 102

The Office Action maintains the rejection of claim 45, as amended, under 35 U.S.C. § 102(b) as allegedly being anticipated by JP 07145598. The Office Action asserts that JP 07145598 discloses a method step of "contacting household pest by placing compositions in a pocket or in a chamber (translation par. 0016)" and that the disclosed composition "is reasonably

expected to have pest-killing effects.” See Office Action at page 3, first paragraph. Applicants respectfully traverse this rejection.

Applicants respectfully submit that JP 07145598 does not teach each and every element required by the present claims and, as a result, fails to establish a *prima facie* case of anticipation of claim 45. In particular, JP 07145598 merely teaches an aroma sheet that has “disinfectant” and “repellant properties.” On page 4/23, under “[CONSTITUTION],” JP 07145598 teaches that eucalyptus oil, menthe oil, menthol, peppermint oil and hinokitiol are essential components of the aroma sheet. In other words, each of the above components must be present in the aroma sheet; it is believed that these components are active ingredients and are not merely inert. Although certain galenicals are also disclosed as additional components, the disclosed galenicals are not taught as being “essential” to the disclosed aroma sheet to achieve the disclosed effects. Further, JP 07145598 teaches that the disclosed aroma sheet may be placed in a pocket or chamber and that the aroma sheet has “disinfectant” and “repellant” properties against mold and mites. However, it is nowhere expressly or inherently disclosed in JP 07145598 that the disclosed aroma sheet may be used for, or has the inherent property, of killing pests such as insects or arachnids. Applicants respectfully submit that one skilled in the art reading the teachings of JP 07145598 would not have understood that a method for killing household pests (such as insects, arachnids or larvae thereof) comprising a step of contacting the household pests with a pesticidally-effective amount of a composition comprising a pesticidally acceptable carrier and a pesticidally active ingredient consisting of rosemary oil and peppermint oil (as presently claimed) is disclosed because, at a minimum, JP 07145598 expressly teaches that the above listed “essential” components (i.e., eucalyptus oil, menthe oil, menthol, peppermint oil and

hinokitiol) are required to be present to achieve the disclosed disinfectant or repellant effect in an aroma sheet. Thus, reconsideration and withdrawal of this rejection are respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

The Office Action rejects claims 4, 19 and 45, as amended, under 35 U.S.C. § 103(a) as allegedly being unpatentable by JP 07145598 and IDS document "Pesticidal and Toxic Chemical News" from PROMPT database (June 1994; database PROMPT accession number 94:375291). The Office Action asserts that one having ordinary skill in the art would have been motivated to incorporate phenethyl propionate (which is disclosed in "Pesticidal and Toxic Chemical News" from PROMPT database (June 1994; database PROMPT accession number 94:375291)), to the aroma sheet composition disclosed in JP 07145598. Applicants respectfully traverse this rejection.

It is respectfully submitted that one of ordinary skill in the art reading JP 07145598 would have readily understood that eucalyptus oil, menthe oil, menthol, peppermint oil and hinokitiol are essential components of the disclosed aroma sheet. JP 07145598 teaches that these "essential components" are the active components of the aroma sheet that are required to achieve the disinfectant and repellant properties disclosed therein. Although "Pesticidal and Toxic Chemical News" from PROMPT database (June 1994; database PROMPT accession number 94:375291) teaches that phenethyl propionate is pesticidally active, one of ordinary skill in the art would not have been motivated to combine the teachings of the applied references to reach the subject matter of the rejected claims. Indeed, the combined teachings of the applied references, would have merely led one of ordinary skill in the art to arrive at a composition having an active ingredient consisting of eucalyptus oil, menthe oil, menthol, peppermint oil, hinokitiol and phenethyl propionate. Applicants respectfully submit that alone or improperly

combined, the applied references would not have rendered the presently claimed methods obvious to one of ordinary skill in the art which requires the patentably distinct combinations of components as the pesticidally active ingredient recited in the rejected claims (e.g., rosemary oil and phenethyl propionate (claim 4); rosemary oil, peppermint oil and phenethyl propionate (claim 19); or rosemary oil and peppermint oil (claim 45)). Thus, reconsideration and withdrawal of this rejection are respectfully requested.

DOUBLE PATENTING

The Office Action maintains the rejection of claim 19, as amended, under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-26 of U.S. Patent No. 6,531,163 in view of U.S. Patent No. 4,759,930. Although Applicants respectfully submit a terminal disclaimer should not be required, Applicants respectfully request that this rejection be held in abeyance until an indication of allowable subject matter. If ultimately deemed necessary, an appropriate terminal disclaimer will be submitted.

CONCLUSION

If anything further could be done to place the above-captioned patent application in better condition for allowance (i.e., via Examiner's Amendment), then please contact the undersigned attorney at the telephone number listed below.

Applicant(s) hereby requests any extension of time deemed necessary for entry of this submission and any submission filed hereafter in this application or any continuing application(s). Applicant(s) makes a Conditional Petition for any relief available to correct any defect in connection with this filing, or any defect remaining in this application after this filing. The Commissioner is authorized to charge any petition fee or any deficiency in fees filed, or

asserted to be filed, or which should have been filed herewith (or with any paper filed hereafter)
to Deposit Account No. 14-1140 or credit any overpayment of fees to such Deposit Account.

Respectfully submitted,

NIXON & VANDERHYE P.C.

Date: October 11, 2006

By: [Signature]
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this document (including any paper referred to as being attached or enclosed) is being sent to the U.S. Patent and Trademark Office via facsimile transmission to (571) 273-8300 on the date indicated below, with a coversheet addressed to Commissioner for Patents, U.S. Patent and Trademark Office.

Date: October 11, 2006
By: [Signature]
Willem F. Gadiano, Reg. No. 37,136